

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2039 of 1999

with

FIRST APPEAL No 2040 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? No

2. To be referred to the Reporter or not? No :

3. Whether Their Lordships wish to see the fair copy : YES
of the judgement? No

4. Whether this case involves a substantial question : YES
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? : YES
No

OGHADBHAI ARJANBHAI

Versus

SECOND ADDL. SPL. LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 2039 of 1999
MR NITIN M AMIN for appellants
MR HL JANI, AGP for Respondent No. 1, 2

2. First Appeal No 2040 of 1999
MR NITIN M AMIN for appellants
MR HL JANI, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL and

Date of decision: 29/07/1999

ORAL COMMON JUDGEMENT

(Per : Panchal, J.)

By means of filing these appeals under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908, the appellants have challenged judgment and award dated April 10, 1992 rendered by the learned Assistant Judge, Ahmedabad Rural in Land Acquisition Cases No. 563/88 and 564/88 and claimed enhanced compensation. We may state that the above-referred to two references were consolidated and Land Acquisition Case No.563/88 was treated as the main case, wherein the parties had led common evidence. Lands in dispute of village Khambhada, Taluka : Dhandhuka, District : Ahmedabad were placed under acquisition pursuant to publication of preliminary notification on November 20, 1986. As common questions of facts and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal was received by the State Government to acquire Survey No.87 belonging to the appellants in First Appeal No.2040/99 as well as Survey No.150 belonging to the appellants in First Appeal No.2039/99 situated at village Khambhada, Taluka : Dhandhuka, District : Ahmedabad for public purpose of "Khambhada Irrigation Scheme". On scrutiny of the said proposal, State Government was satisfied that the above-referred to two survey numbers were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" in short) was issued which was published in the Government Gazette on November 20, 1986. The owners of the lands were served with notices and they had filed their objections against the proposed acquisition. After taking into consideration their objections, report was forwarded by the Land Acquisition Officer to the State Government as contemplated by section 5A(2) of the Act. On consideration of the said report, State Government was satisfied that the lands which were specified in the notification published under section 4(1) of the Act were needed for the public purpose of "Khambhada Irrigation Scheme". Therefore, declaration under section 6 of the Act was made which was published in the Government Gazette on June 18, 1987. The interested persons were thereafter served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate

of Rs. 20/- per sq.mt., but having regard to the materials placed before him, the Land Acquisition Officer by his award dated February 17, 1988 offered compensation to the claimants at the rate of Rs. 1.50 ps. per sq.mt. The claimants were of the opinion that offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Ahmedabad Rural which were numbered as Land Acquisition Cases No. 563/88 and 564/88. In the reference applications it was pleaded by the claimants that having regard to high fertility of the lands acquired as well as development which had taken place near the acquired lands, the claimants should have been paid compensation at the rate of Rs. 20/- per sq.mt. The respondents contested reference applications by filing reply at Exh.24 and contended, inter-alia, that as determination of compensation by the Land Acquisition Officer was just and proper, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were framed by the reference Court. In order to substantiate the claim advanced in the reference applications, witness Oghadji Arjanji was examined by the claimants at Exh.16. Another witness Bhimjibhai Jagabhai Sojitra who was valuer by profession was examined at Exh.40. The extract from record of rights was produced at Exhs. 12 & 13; whereas chart of market prices of agricultural produces was produced at Exh.37. The previous award rendered by the reference Court and relied on by the claimants were produced at Exhs. 14 & 15.

3. On appreciation of evidence led by the parties, the reference Court deduced that the previous award Exh.14 produced by the claimants was relevant as well as comparable and market value of the lands acquired should be determined on the basis of the said award. In ultimate decision, the reference Court awarded Rs. 10.50 ps. per sq.mt. by the impugned award, giving rise to present appeals.

4. Mr. Nitin M. Amin, learned Counsel for the appellants submitted that as the High Court had enhanced compensation by Rs.1/- per sq.mt. in First Appeals No.5291/96 to 5300/96, present appellants are also entitled to additional compensation at the rate of Rs.3/per sq.mt. as in both the present cases, lands were acquired by publication of notification on November 20, 1986 i.e. after a period of about 3 years from the date

of publication of notification under section 4(1) of the Act which was subject matter of consideration in the above referred to appeals.

5. Mr. H.L.Jani, learned A.G.P. for the respondents pleaded that having regard to the facts of the case, it cannot be said that determination of compensation by the reference court is not just and, therefore, the appeals should be dismissed.

6. We have heard the learned Counsel for the parties. We have also taken into consideration the relevant documents produced by the parties before the reference court. It is not in dispute that the lands of village Khambhada were placed under acquisition for Khambhada Irrigation Scheme pursuant to publication of preliminary notification issued under section 4(1) of the Act on September 6, 1983. In Land Acquisition Reference Cases No.829/88 to 852/88 reference Court had awarded additional compensation to the claimants at the rate of Rs. 9/- per sq.mt. It is also not in dispute that in First Appeals No.1796/95 to 1819/95 decided on July 12, 1996, Division Bench of this Court had awarded additional compensation of Rs. 1/- per sq.mt. to the claimants. Placing reliance on the said decision, additional compensation of Rs.1/- per sq.mt.was ordered to be paid to the claimants in First Appeals No.5291/96 to 5300/96. From the impugned award, it becomes clear that though the reference Court relied on previous award and though there was time lag of about 6 years, no reasonable rise in price of land was considered in favour of the claimants inspite of the fact that a finding was recorded to the effect that notification covered by award Exh.14 was published 6 years prior to publication of notification for acquiring lands in the present cases. In view of the two judgments referred to above, which are delivered by the High Court, there is no manner of doubt that the claimants would be entitled to additional amount of compensation. As noted earlier, in the cases decided by the High Court notification under section 4(1) of the Act was published on September 6, 1983; whereas in the present case, notification under section 4(1) of the Act was published on November 20, 1986 and in view of the time lag between the two notifications, we are of the opinion that interest of justice would be served if additional compensation at the rate of Rs. 3/- per sq.mt. is granted to the claimants.

For the foregoing reasons, the appeals are partly allowed. It is held that the claimants/appellants in these two appeals would be entitled to additional

compensation of Rs. 3/- per sq.mt. i.e. in all total compensation at the rate of Rs. 13.50 ps. per sq.mt. The claimants would be entitled to additional compensation as contemplated by section 23(1-A) of the Act as well as solatium and interest in accordance with the provisions of the Land Acquisition Act, 1894. There shall be no orders as to costs. Office is directed to draw decree in terms of this judgment.

(patel)